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No. 495

*In the Supreme Court of the United States*

OCTOBER TERM, 1940

JOSEPH T. RYBSON AND EDWARD L. RYBSON, JR.,  
AS EXECUTORS OF THE ESTATE OF MARY M.  
RYBSON, PETITIONERS

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT

BRIEF FOR THE UNITED STATES



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**No. 495**

**JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR.,  
AS EXECUTORS OF THE ESTATE OF MARY M.  
RYERSON, PETITIONERS**

**v.**

**THE UNITED STATES OF AMERICA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT**

**BRIEF FOR THE UNITED STATES**

## **OPINIONS BELOW**

The opinion of the District Court (R. 61-67) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90-97) is reported in 114 F. (2d) 150.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on July 9, 1940 (R. 97). The petition for a writ of certiorari was filed on October 9, 1940, and was granted on November 14, 1940. The jurisdic-

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tion of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

1. Whether under Section 504 (b) of the Revenue Act of 1932 the donor of a gift in trust is entitled to one \$5,000 exclusion for the entire trust, or to a separate \$5,000 exclusion for each of the beneficiaries of the trust.

2. If the number of such exclusions is to be determined by the number of beneficiaries, whether certain gifts in trust were of "future interests in property" for which no exclusions are allowable under Section 504 (b).

#### STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Revenue Acts of 1932 and 1938 and of the Treasury regulations promulgated thereunder are set out in the Appendix to the brief for the United States in *United States v. Pelzer*, No. 393, this Term, to be argued herewith.

#### STATEMENT

The facts are not in dispute. So far as material to the issue here involved they may be summarized as follows:

In 1929, Mary Ryerson,<sup>1</sup> the taxpayer, purchased a single premium life insurance policy on her own

<sup>1</sup> Mary Ryerson, the original plaintiff, died during the pendency of the appeal in the court below, and the petitioners, as executors of her estate, were substituted as parties (R. 87, 89).

life, in the face amount of \$100,000. This policy was subsequently reissued in the form of two single premium life insurance policies, each in the face amount of \$50,000 (R. 39).

On December 26, 1934, the taxpayer assigned the first of these two policies to Donald McKay Frost and Mary Ryerson Frost, trustees under a trust agreement dated October 31, 1933 (R. 39). This trust instrument provided that the trustees should pay one-fourth of the trust income to Mary Ryerson Frost during her life and after her death in equal shares to her two daughters if living and if not to their issue, the balance of the trust income to be accumulated; that upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, or after their deaths by other designated persons, the trustees should dissolve the trust and pay over the principal to Donald McKay Frost and Mary Ryerson Frost or their issue as specified in the request; and that if the trust were not otherwise terminated sooner it should terminate upon the death of the survivor of Mary Ryerson Frost and her two children (R. 8-10, 39). This trust is hereafter referred to as the 1933 trust.

On the same date, December 26, 1934, the taxpayer assigned the second of the policies to Joseph T. Ryerson and Edward L. Ryerson, trustees under a trust agreement dated November 15, 1934 (R. 39). This instrument provided that upon the death of the grantor the trustees should hold and disburse the proceeds of the insurance, as follows: If Isabelle

Ryerson, the widow of the grantor's son, Donald Ryerson, survived the grantor, the trustees were to divide the trust estate into two portions, one portion comprising two-thirds in value of the trust estate and the other portion one-third. Isabelle Ryerson was then to receive the income from the smaller portion of the estate for her life, and on her death the principal of that portion was to be distributed to those persons who would be the heirs at law of Donald Ryerson had he died on the same date as Isabelle Ryerson. Two-thirds of the estate, or, if Isabelle Ryerson did not survive the grantor, all of the estate, was to go to those descendants of the grantor's son, Donald Ryerson, who should survive the grantor, and if no descendants should so survive, to the grantor's heirs at law. Persons taking under these provisions were to receive one-third of their share of the principal on reaching twenty-six and the balance on reaching thirty, and the income from their share in the meanwhile (R. 15-17). This trust is hereafter referred to as the 1934 trust. Donald Ryerson had died on May 8, 1932, leaving as his sole descendants Joan and Anthony Ryerson (R. 40).

In determining the gift tax liability for 1934, the Commissioner of Internal Revenue allowed one \$5,000 exclusion from the gift to the 1933 trust and no exclusion from the gift to the 1934 trust. Proceeding, evidently, upon the theory that the beneficiaries, and not the trusts, were the persons to whom the gifts were made, he allowed an exclusion for Mary Ryerson Frost from the gift to the 1933 trust, but

ruled that the gifts to the beneficiaries of the 1934 trust were of future interests (R. 33).

The donor paid the tax so computed and brought suit for a refund. In her complaint she claimed two \$5,000 exclusions from the gift to the 1933 trust, one for Mary Ryerson Frost (which had been allowed) and one for Donald McKay Frost. She claimed three \$5,000 exclusions from the gift to the 1934 trust, one for Isabelle Ryerson and one each for Joan and Anthony Ryerson (R. 4-5).

The District Court held for the taxpayer, ruling that two exclusions were allowable on account of the gift to the 1933 trust and three exclusions on account of the gift to the 1934 trust (R. 65-66).

The Circuit Court of Appeals reversed. It held, following its earlier decision in *Commissioner v. Wells*, 88 F. (2d) 339, that the trusts were the donees of the gifts rather than the beneficiaries, so that one exclusion was allowable for each of the two trusts (R. 94-96).

#### ARGUMENT

This case presents two questions. The first is whether under Section 504 (b) of the Revenue Act of 1932 the donor is entitled only to one \$5,000 exclusion for the entire trust, or is entitled to a separate exclusion on account of each beneficiary of the trust who received a present interest in the gift to it. The second question is whether, if it be held that the number of exclusions is to be determined by the number of beneficiaries, the four beneficiaries on account of whom petitioners claim exclusions, in

addition to the exclusion allowed by the Commissioner, received present interests in the gifts in trust, or only future interests for which no exclusions are allowable. The first of these questions is exactly presented in *United States v. Pelzer*, No. 393, this Term, to be argued herewith, and the second is substantially similar to the second question in the *Pelzer* case. Hence we adopt for this case the brief for the United States in the *Pelzer* case and discuss here only the additional facets of the future interest question raised by the facts of this case and those of the taxpayer's arguments which are not covered in the *Pelzer* brief.

1. On the first branch of the case petitioners' main reliance (and also the main reliance of the taxpayer in the *Pelzer* case) is on *Estate of Sanford v. Commissioner*, 308 U. S. 39; *Rasquin v. Humphreys*, 308 U. S. 54, and earlier similar cases. In the *Humphreys* case the trust instrument reserved to the donor the power to change the beneficiaries, and the Court held that a gift to the trust was "incomplete and not subject to the gift tax" (p. 56). Correlatively, in the *Sanford* case the Court held that a gift in trust became subject to the gift tax when the donor relinquished the power to designate new beneficiaries. But in considering whether the retention by the donor of this degree of control rendered the gift incomplete, the Court decided nothing about whether the trust or the beneficiary is the "person" to whom a gift in trust is given. Cf. Sibley, J., concurring in *Hutchings v. Commissioner*, 111 F. (2d) 229, 231

(C. C. A. 5th). Doubtless the *Humphreys* and *Sanford* cases show that it is the control retained by the donor rather than the interest taken by the trust entity which is decisive of whether the transfer is subject to the gift tax, but that proposition has no perceptible bearing on the present issue, which certainly was not considered by the Court in those cases.

2. Applying here the argument in the *Pelzer* brief with respect to future interests, we think that none of the beneficiaries of the 1933 trust had present interests, except perhaps Mary Ryerson Frost, for whom an exclusion was allowed by the Commissioner. Under the 1933 trust instrument one-fourth of the income was to be paid to her for life and after her death to her two daughters. The remaining three-fourths of the income was to be accumulated until the termination of the trust. While the principal of the trust was to be distributed and paid over to Mary Ryerson Frost and Donald McKay Frost upon their joint request at any time, Donald McKay Frost, for whom the petitioners claim an additional exclusion, had no present beneficial interest in the property. He could terminate the trust, and so secure a share in the corpus, only with the concurrence of Mary Ryerson Frost. Moreover, a \$5,000 exclusion is not allowable for any gift to Donald McKay Frost in the absence of a showing that it had that value to him. Since he could take no action without the concurrence of Mary Ryerson Frost, we submit that it is impossible to place any

value upon his interest. In this connection it may be noted that the petitioners here, unlike the taxpayer in the *Pelzer* case, recognize that they are under the necessity of establishing the value of each gift to each beneficiary for whom an exclusion is claimed. See R. 5, 40.

With regard to the 1934 trust it also appears that the beneficiaries had future interests. No one took any present enjoyment in the property conveyed to this trust. The corpus of the trust was a life insurance policy and, although the trustees were empowered to receive the cash surrender value of the policy, there was to be no distribution to any beneficiary until after the death of the grantor (R. 16). Upon the grantor's death, if Isabelle Ryerson survived her, the trust estate was to be divided into two portions, Isabelle Ryerson to receive the income from one portion with remainder over to certain heirs. The remaining portion, or all of the estate if Isabelle Ryerson did not survive the grantor, was to go to the surviving descendants of the grantor's deceased son, that is, his two daughters, or, if they did not survive the grantor, the property was to go to her heirs at law. Thus for all of the beneficiaries there was, as in the *Pelzer* case, a waiting period during which not even income was to be disbursed. Further, none of the beneficiaries would receive anything unless he survived the grantor. We think it is apparent that the interests of the beneficiaries were "limited to commence in possession or enjoyment at a future date" (H. Rep. No. 708, 72d Cong.,

1st Sess., p. 29) and that they were, therefore, future interests within the meaning of Section 504 (b).

#### CONCLUSION

We submit that the decision of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted.

FRANCIS BIDDLE,

*Solicitor General.*

SAMUEL O. CLARK, Jr.,

*Assistant Attorney General.*

SEWALL KEY,

J. LOUIS MONARCH,

THOMAS E. HARRIS,

ELIZABETH B. DAVIS,

*Special Assistants to the Attorney General.*

JANUARY 1941.